

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

Reissue Application No. 09/773,303

Group Art Unit: 1638

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Examiner: Nelson, Amy J.

Reexamination of U.S. Patent No. 5,894,079

For: FIELD BEAN CULTIVAR NAMED ENOLA

Inventor: Proctor, Larry M.

Date: 25 March 2003

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**DECLARATION OF LARRY PROCTOR**

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I am the inventor of the cultivar involved in these proceedings.

The statements that follow are based on my personal knowledge or, where stated, on my information and belief.

In June or July 1991, I traveled to the Sonora region of Mexico to inspect some of their bean fields to better understand their operations and hopefully to expand the sale of pinto bean seed in Mexico.

During the trip to Mexico, I purchased a small bag of commercial dry edible pinto beans (approximately 4 or 5 pounds) from a bulk bin in a grocery store.

When I returned to Colorado, I discovered that the bag of beans contained various other types of beans, including yellow beans. I separated out the yellow beans from the other beans in the bag and planted them in a vegetable garden in Delta, Colorado.

I am not entirely certain of the identity of the beans that I planted in 1991. They were a brownish yellow as compared to the bright yellow of the cultivar of my

invention. These beans were not uniform; they exhibited differences in color (seed coat and hilar) and shape. But they were the best collection I could pull together.

7. After the beans grew out, I pulled (rogued) plants that had undesirable appearances. In approximately September/October 1991, seed from the remaining plants was harvested. This seed was more uniform in shape and color than the seed I had assembled earlier. All of these activities were conducted in secrecy. No one other than members of my family knew what I was doing, and they were sworn to secrecy.

8. In approximately May or June 1992, I planted the seed saved from the 1991 harvest in a private vegetable garden in Delta, Colorado. The plants were more uniform than the plants grown in 1991. As the plants grew, I pulled (rogued) plants with undesirable characteristics. I allowed the remaining plants to grow to harvest. I harvested and saved the seed from the remaining plants. This seed was more uniform in shape and color than the seed I had harvested in 1991. All of these activities were conducted in secrecy. No one other than members of my family knew what I was doing, and they were sworn to secrecy.

9. In May or June 1993, I planted the seed saved from the 1992 harvest in a private vegetable garden in Delta, Colorado. The plants were more uniform than the plants grown in 1992. As the plants grew, I pulled (rogued) plants with undesirable characteristics. I allowed the remaining plants to grow to harvest. I harvested and saved the seed from these remaining plants. This seed was more

uniform in shape and color than the seed I had harvested in 1992. All of these activities were conducted in secrecy. No one other than members of my family knew what I was doing, and they were sworn to secrecy.


10. *In the 1992-93 timeframe, some of the seed was grown out by Polly Proctor at my request. This activity occurred in her greenhouse and was done in secrecy.*
11. *In approximately May or June 1994, the seed saved from 1993 was planted by Mr. Mike Schmalz and me in Montrose County, Colorado in a private hidden plot. The plants were more uniform than the plants grown in 1993. As the plants grew, I pulled (rogued) plants with undesirable characteristics. I allowed the remaining plants to grow to harvest. I harvested and saved the seed from these remaining plants. This seed was the Enola seed. Activity from this point was directed to insuring the uniformity and stability of Enola. This seed was more uniform in shape and color than the seed I had harvested in 1993. All of these activities were conducted in secrecy. No one other than members of my family and Mr. Schmalz knew what I was doing, and they were sworn to secrecy. Mr. Schmalz was working for me on this project.*
12. *In approximately May or June 1995, the seed saved from 1994 was planted by Mike Schmalz and me in Montrose County, Colorado in a private hidden plot. The plants were more uniform than the plants grown in 1994. As the plants grew, I pulled (rogued) plants with undesirable characteristics. I allowed the remaining plants to grow to harvest. I harvested and saved the seed from these remaining plants. This seed was more uniform in shape and color than the seed I*

had harvested in 1994. All of these activities were conducted in secrecy. No one other than members of my family and Mr. Schmalz knew what I was doing, and they were sworn to secrecy. Mr. Schmalz was working for me on this project

13. To the best of my recollection, my first public disclosure of my Enola bean was in late November 1995 or December 1995. My patent application was filed by my patent attorney on November 15, 1996. She was adamant that the application get filed less than a year before my first public disclosure of Enola.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my ability.

Dated this 25th day of March 2003.

  
Larry Proctor  
3/25/03